

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ADOLFO TAMEZ, §
§
Plaintiff, §
VS. § CIVIL ACTION NO. C-08-68
§
BROWN WATER TOWING I, INC., *et al*, §
§
Defendants. §

ORDER

On this day came on to be considered Claimant Adolfo Tamez's Opposed Motion to Lift Stay. (D.E. 34.) For the reasons discussed below, Claimant's motion is hereby DENIED.

Claimant Adolfo Tamez ("Movant") concedes that, pursuant to Fifth Circuit precedent, the Court cannot lift the stay in this case without a stipulation signed by both Movant and Claimant T.W. Laquay Dredging, Inc. ("LaQuay"). (D.E. 41 at 1.) Movant, however, encourages the Court to decide this motion contrary to Fifth Circuit precedent based on orders from the Eleventh and Second Circuits. (D.E. 41 at 2-3 (citing Beiswenger Enters. Corp. v. Carletta, 86 F.3d 1032, 1036-1037 (11th Cir. 1996); Dammers & Vanderheide & Scheepvaart Maats Christina B/V, 836 F.2d 750, 758-759 (2nd Cir. 1998))). This Court is bound by Fifth Circuit precedent, which clearly states:

When the aggregate of the damages being sought by all claimants exceeds the value of the concursus, actions in state court cannot proceed unless all claimants enter into a stipulation that adequately protects the shipowner which has filed a complaint in federal court seeking to limit its liability. We recently stated that a "claimant" in this context includes a codefendant who is asserting a cross claim for indemnification, costs, and attorneys' fees.

Port Arthur Towing Co. v. John W. Towing, Inc. (In re Port Arthur Towing Co.), 42 F.3d 312, 316 (5th Cir. 1995) (citations omitted). LaQuay falls within this definition of "claimant" and

LaQuay has not signed the requisite stipulation. Accordingly, Movant's motion to lift the stay is hereby DENIED.

SIGNED and ORDERED this 13th day of February, 2009.



Janis Graham Jack
United States District Judge